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10 **(Pro Hac Vice Motion Forthcoming)**

11 **United States District Court**
12 **Southern District Of New York**

13 **ERIC ANDREWS,**
14 ***PLAINTIFF,***
15 **v.**
16 **BARNES AND NOBLE**
17 **INCORPORATED,**
18 ***DEFENDANT.***

19 **COMPLAINT**
20 **EMPLOYMENT DISCRIMINATION**
21 **DEMAND FOR JURY TRIAL**
22 **1. 42 U.S.C. § 1981**

1 Plaintiff ERIC ANDREWS avers as follows:

2
3 (a) **PRELIMINARY STATMENT**

4 Defendant, Barnes and Noble Inc has discriminated against Plaintiff in
5 the formation of an employment contract on the basis of his race, in
6 violation of 42 U.S.C. § 1981:
7

- 8
9 1. Plaintiff brings this action seeking to claim injury from employment
10 discrimination based on race arising from an action under 42 U.S.C.
11 §1981 (a).
12
13 2. PLAINTIFF ERIC ANDREWS is a United States Citizen born in
14 the Detroit, Michigan on March 22, 1963. His race group is African
15 American or black.
16
17 3. Mr. Andrews holds a Bachelor in Fine Art (BFA) from Parsons
18 School of Design (1999).
19

20
21 Various Barnes and Noble Store employment:

- 22 4. Beginning 1984, Mr. Andrews worked at various Barnes and
23 Nobles. Starting with the Barnes and Noble on 105 Fifth Ave, 18th
24 and Fifth Ave, the flagship until 2001. Mr. Andrews started off part-
25 time and ended full time.
26
27
28

1 4. Mr. Andrews was employed at Barnes Noble on 18th and Fifth Ave
2 until 2001.
3

4 5. In 2002 Mr. Andrews returned to Barnes & Noble in Hoboken at the
5 salary \$7.25 as part time sales associate. In 2010, the Barnes and
6 Noble store at Hoboken was closed and Mr. Andrews was
7 transferred to the Livingston Store, as a Merchandise manager.
8
9

10 **(b) DISCRIMINATION**
11

12 6. 42 U.S.C section 1981 (a) states that:

13
14 “All persons within the jurisdiction of the United States shall have the
15 same right in every State and Territory to make and enforce contracts,
16 to sue, be parties, give evidence, and to the full and equal benefit of all
17 laws and proceedings for the security of persons and property as is
18 enjoyed by white citizens, and shall be subject to like punishment,
19 pains, penalties, taxes, licenses, and exactions of every kind, and to no
20 other.” Here, defendant has discriminated against Mr. Andrews in the
21 formation of an employment contract on the basis of race in violation of
22 42 U.S.C. § 1981. Mr. Andrews avers that he is a direct victim and a
23 witness to the following discrimination:
24
25
26
27
28

1 7. In 2010, Mr. Andrews, was hired at the Livingston Store.

2
3 8. In 2010 he was written up by Michael Fournarakis, (First
4 write up) for security lapse. Here Mr. Andres was accused
5
6 of living an unlocked door unguarded ehilre receiving
7
8 shipment of books Mr. Andrews was never told that this
9
10 was the procedure as it had been done this way in Hoboken.

11 9. In summer of 2010 he was written-up, Second Write-Up, by
12
13 Mr. Fournarakis, for gossiping along side Roger. The third
14
15 person was never written up DJ Moynihann. Gossiping was
16
17 not prohibited on any company materials nor was Mr.
18
19 Andrews ever told that he could not speak about other
20
21 employees before then.

22 10. In July 2010, Mr. Fournarakis wrote-up Mr. Andrews
23
24 (Third-Write-up), for being off the sales floor when the
25
26 closing announcement was made.

27 11. During his time in the New York and Hoboken Stores, a
28
total of 26 years Mr. Andrews was never written up.

1 12. In August 5th, 2010, Mr. Andrews was written up for
2
3 opening a receiving door, Forth Write-Up, without a
4
5 manager present, even though he was a manager. This
6
7 requirement was never communicated to Mr. Andrews as a
8
9 manager.

10 13. In October 4th, 2010 he was written up yet again for poor
11
12 time management, Fifth Write-up, for failure to complete a
13
14 task. Putting out a display of books. Mr. Andrews in his
15
16 defense, did not put the display because he was supervising
17
18 the whole store while the actual manager was in his office.

19 14. This was the Fifth write-up by the same manager
20
21 Fournarakis.

22 15. In October 8th, 2010, received a verbal counselling by Mr.
23
24 Fournarakis for failure to ensure the store's displays were
25
26 properly maimed without warning.
27
28

1 16. Mr. Andrews further avers that these petty write-ups, a
2
3 sustained for of racial discrimination, were designed to
4
5 make him voluntarily quit because of his race.

6 17. In October 11th, 2010, Sixth Write-up, Mr. Andrews was
7
8 again given a verbal counselling by the same manager for
9
10 not paying attention to a store process.

11 18. In November 4TH, 2010 he was written up for failure to
12
13 prioritize.

14 19. Mr. Andrews was written for a total of ten times for petty
15
16 offences.

17 DEMOTION

18
19
20 20. In November 2015, Mr. Andrews was demoted at the
21
22 Livingston Store to Head Cashier by Manager Fournarakis.

23 21. In total Mr. Andrews was written up a total ten times for
24
25 petty on the job decisions as a manager.

26 22. Based on Mr. Andrews's observation, the frivolous
27
28 unwarranted write-ups, and several conversations with

1 fellow employees Mr. Andrews released he was been
2
3 discriminated against because other co-workers constantly
4
5 did terminable offenses but retained their jobs including
6
7 dating at work, which is against the company policy.

8 23. During this time, in 2015, a Caucasian, David Snowden,
9
10 an employee at the Livingston Barnes and Noble Store had
11
12 a conversation with Mr. Andrews in which he said, "*I think*
13
14 *you are being discriminated against.*"

15 24. In general, Caucasian's held all managerial positions, at
16
17 the Livingston Store and African Americans were never
18
19 promoted to such positions despite dedication and
20
21 qualifications. During Mr. Andrews' employment at Barnes
22
23 and Noble Livingston, only once did he see a black manager
24
25 and that was a man hired as the Café manager.

26 25. There is a marked salary gab between African Americans
27
28 and Caucasians who had entered into the system not as

1 book sellers but as managers even when performing the
2
3 duties of book sellers.

4 **SATISFACTORY WORK**

5
6 26. Mr. Andrews was employed at Barnes and Noble Inc. for
7
8 32 years, from 1984-2016 and his lengthy time of
9
10 employment reflects his high standard of work ethic and
11
12 professionalism. A standard by which in 1992 he was
13
14 promoted to Department Manager (Fifth Ave. Store); in
15
16 addition, Mr. Andrews has received numerous
17
18 commendations in person from Barnes and Noble shoppers.

19 **INJURY**

20 27. This complaint seeks to address the totality of Mr.
21
22 Andrew's rights for employment free from discrimination
23
24 and humiliation regardless of a non-jury opinion by the
25
26 EEOC; and to address this injury to a jury pursuant to the
27
28 Seventh Amendment.

1 28. Notable, during administrative proceedings Mr. McGovan
2
3 with the EEOC, asked for more information on Mr.

4 Andrew's case with Barnes and Noble Inc. This request for
5
6 further discovery was refused by Barnes and Noble Inc.
7

8 **REVENGE TERMINATION**

9
10 29. After the EEOC decision was rendered, in July, 2016, Mr.
11
12 Andrews was fired from the Livingston Barnes and Noble
13
14 store, after 32 years of employment, for unsatisfactory work
15
16 by Meetra Finngan.

17 **DISPARATE TREATMENT**

18 30. Mr. Andrews observed constant practice of intentional unequal
19
20 treatment of Caucasian employees who were never, written up or
21
22 fired for worse conduct.

23 **(c) JURISDICTION AND VENUE**

24 33. This Court has subject matter jurisdiction over this civil rights
25
26 action pursuant to 28 U.S.C. §§ 1331, 1338 (a) and 1338 (b), and under
27
28 its supplemental jurisdiction because this raises a question of federal
law.

1 34. This Court has personal jurisdiction over Defendant because
2 their corporate office and place of business is in New York City.
3

4 35. Venue is proper in this district under 28 U.S.C. § 1400(a) because
5 defendant has continuous business contacts under 28 U.S.C. §§
6 1391(d).
7

8 34. Plaintiff lives in New Jersey and within 100 miles of district.
9

10 35. The statute of limitations, of four years, from the day of incident,
11 July 2016 has not expired under *Jones v. R.R. Donnelley & Sons*
12 *Co.*, 541 U.S. 369 (2004).
13

14 **(d) PARTIES**
15

16 37. PLAINTIFF ERIC ANDREWS is a U.S. citizen who has resides
17 in Jersey City, New Jersey.
18

19 38. BARNES AND NOBLE INC., is a business with several outlets in
20 City of New York.
21

22 **FIRST CAUSE OF ACTION**
23 **(Unlawful Employment Practices)**

24 (By plaintiff Against Defendants)

25 39. Plaintiff incorporates herein by reference each and every
26 averment contained in paragraphs 1 through 15, inclusive.
27

28 **40. UNLAWFUL EMPLOYMENT PRACTICES**

(42 U.S.C. § 1981)

(a) Employer practices:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other:

41. Through their policy, practice and conduct defendant, Barnes and Noble Inc, acted in violation of Section 1982 to discriminate against Mr. Andrews during his employment, through a conduct of disparate, unfair, improper and humiliating treatment towards him. Such conduct caused loss of employment, emotional pain and suffering.

**SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)**

42. Plaintiff incorporated paragraphs 27-41 and includes breach of material condition in employment contract for employment free from racial discrimination. As an implied condition – reasonable payment commensurate with experience, education and training. At close of Mr.

1 Andrews employment Mr. Andrews was earning \$12. A mere \$4.75
2 increase from his salary of 32 years ago, \$7.25.
3

4 **(THIRD CAUSE OF ACTION)**

5 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
6

7 43. Through defendant's actions. Mr. Andrews's health has
8 deteriorated, and he now suffers from various ailments induced by
9 stress.
10

11 **(e) CLAIM**
12

13 44. At all times when incidents happened to Mr. Andrews
14 supervisors and managers acted within the scope of Barnes and
15 Noble Inc policies, practices and direction whether as directed or
16 as condoned.
17

18 45. Causes of action in noth discriminatory practices are reflected by
19 defendant's pay structure, management hierarchy and general
20 disparate treatment between Caucasian and African American
21 employees. In addition to a work environment which humiliated
22 him.
23

24 46. As a direct and proximate result of foregoing acts and conduct of
25 defendant – Barnes and Noble Inc., employment practices. A
26
27
28

1 practice reflected by a culture of disparate treatment. Plaintiff
2
3 has sustained and will continue to sustain substantial,
4 immediate, and irreparable injury, for which there is no adequate
5 remedy at law including but not limited to emotional pain and
6 suffering, lost wages and public humiliation from the practice of
7 racial preferential treatment at Barnes and Noble Inc.
8
9

10 47. WHEREFORE, Plaintiff prays for judgment against Defendant as
11 follows:
12

- 13 i. For damages in such amount as may be found, or as
14 otherwise permitted by law. Not limited to pain and
15 suffering from working in an environment that
16 dehumanized him as an African American employee.
17
- 18 ii. For plaintiff's attorney's fees, costs, and disbursement in
19 this action pursuant to 42 U.S.C. § 1988 and other
20 relevant statutes; and
21
- 22 iii. For such other and further relief as the court may deem
23 just and proper.
24
25
26
27
28

1 February 23th, 2019

2
3 /s/ Kissinger N. Sibanda

4
5 By: __/Kissinger N. Sibanda/_____
6 LL.B(Hons); LL.M (Trial); LL.M (State).
7 Attorney for Mr. Eric Andrews

8
9 **DEMAND FOR JURY TRIAL**

10 PLAINTIFF Eric Andrews demands a trial by jury.

11 Date: February 23, 2019

12
13 /s/ Kissinger N. Sibanda
14 Attorney for Eric Andrews

15
16 By: __/Kissinger N. Sibanda/_____
17 KISSINGER N. SIBANDA Esq

18 Attorney for Eric Andrews
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PROOF OF SERVICE:

On February 23rd, 2019 Attorney Kissinger N. Sibanda severed
defendant Barnes and Noble this complaint with summons by certified
mail to business address:

Barnes and Noble Inc.,
122 5th Avenue
Seventh Floor
New York, NY
10011

C/O General Counsel
Brad Feuer

/s/ Kissinger N. Sibanda Esq

KISSINGER N. SIBANDA
Attorney for ERIC ANDREWS